IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

Nos. 587-588-589.

EDWIN J. CREEL, *Petitioner,*

v.

ROBERT T. CREEL, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

OPINION BELOW.

The opinion of the United States Court of Appeals for the District of Columbia is reported in 149 Federal Reporter 2nd Series 830.

JURISDICTION.

The order of the United States Court of Appeals for the District of Columbia was entered May 21, 1945. The jurisdiction of this Court is invoked by Petitioner under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1935.

SUMMARY STATEMENT OF FACTS.

This is an application for certiorari to review an order of the United States Court of Appeals for the District of Columbia dismissing two appeals therein numbered 8770 and 8823 and in 8910 affirming the judgment of the District Court of the United States for the District of Columbia confirming an order of sale to respondent of certain partnership assets, formerly owned by a copartnership, consisting of the petitioner and respondent.

The facts leading up to the sale of said partnership assets are as follows:

On February 27, 1933, nearly thirteen years ago, respondent filed his suit for dissolution of partnership and the appointment of a receiver. On March 20, 1933, the District Court entered an order appointing a receiver. Although the District Court appointed as Receiver, E. Quincy Smith, the same person whom the petitioner suggested should be appointed as arbitrator, the petitioner vigorously opposed the signing of said order and immediately appealed therefrom to the United States Court of Appeals for the District of Columbia which affirmed the order. He then applied to this Court for a writ of certiorari, which was denied (294 U. S. 723, 79 L. Ed. 1255). The opinion of the United States Court of Appeals for the District of Columbia is reported in 63 App. D. C. 384, 73 F. (2)107, and contains a full statement of the basic facts up to that time.

By its order of January 24, 1935, the District Court, at the suggestion of the petitioner, appointed Erskine Gordon Receiver of the assets of the partnership in place of E. Quincy Smith, who had died prior to said date. Erskine Gordon qualified as such Receiver on January 25, 1935, and since said time has been actively engaged in carrying on the said business.

Subsequently, in June, 1936, the District Court ordered the partnership dissolved (R. 70). At this hearing the petitioner contended that he had large and sundry claims

against the business, in addition to his claim as owner of a one-half interest in the partnership assets (R. 245). The Court, therefore, instead of authorizing the Receiver to sell the business at that time, referred the matter to the Auditor for the specific purpose of determining the respective interests of the partners in the assets of the partnership. On January 18, 1939, the Auditor, after devoting 46-1/2 days to a hearing on the reference, in which thirty-seven volumes of testimony were taken, filed his report (R. 71), in which he denied all of petitioner's ten claims of allowances for alleged damages or superior capital contribution. This report was confirmed by the District Court on June 2, 1939 (R. 178). Petitioner appealed from the order of confirmation to the United States Court of Appeals for the District of Columbia, which allowed him nine extensions of time in which to file his record and brief. Upon his failure to file his brief, that Court dismissed his appeal in October, 1941.

Thereafter, in August, 1942, the District Court ordered the sale of the partnership assets (R. 231), from which order petitioner noted his appeal to the United States Court of Appeals for the District of Columbia. In June, 1943, that Court issued an order which required the appeal to stand dismissed unless petitioner filed the complete record on appeal by July 1, 1943. Petitioner thereafter filed his motion for a rehearing and modification of this order but, on October 18, 1943, the Court adhered to its previous order, the effect of which was to dismiss the appeal from the order of sale.

Thereafter, on February 1, 1944, the assets of the partnership were finally offered for sale by the Receiver at public auction. There were only two bidders: the respondent, who bid $240,000.00, and the petitioner, who bid $240,500.00. The assets were accordingly knocked down to petitioner on his high bid of $240,500.00, and he deposited with his bid, his check of $10,000.00 (R. 264). Immediately thereafter, the sale to petitioner was, *with the consent of*

respondent, confirmed by the Court (R. 283). Petitioner appealed to the United States Court of Appeals for the District of Columbia from this order confirming the sale to him on his own bid, which appeal was subsequently dismissed by that Court on May 12, 1944.

The Petitioner failed to comply with the terms of sale (R. 305), whereupon the District Court passed an order March 22, 1944, holding petitioner in default and ordering a resale of the property at public auction at the risk and cost of petitioner (R. 339), upon which order petitioner's appeal, No. 8770, is based.

At the resale, Petitioner and Respondent were again the only bidders. Petitioner bid $235,000.00. Respondent bid $220,632.48, the exact amount of appraisal of the assets as of December 31, 1943 (R. 344). Thereupon the Receiver accepted deposits of $10,000.00 from each of the bidders, with the understanding that he would submit both bids to the Court and request instructions as to what action he should take in relation thereto (See Receiver's report—R. 344). At the hearing at which the two bids were submitted, the Court in its order (R. 466) rejected both bids and ordered the return of the deposits, which were accepted by each of the parties. The order also gave the Petitioner the right to purchase the assets for the sum of $240,500.00, the amount of his bid at the first sale; but further provided that if he failed to avail himself of this right within thirty days, that Respondent should have the right or option to purchase the assets for the sum of $240,000.00, the amount of his bid at the first sale. The Petitioner's second appeal, No. 8823, is based on this order.

Petitioner failed to exercise his right to purchase the assets for the sum of $240,500.00, and thereupon Respondent notified the Receiver that he desired to purchase the assets for the sum of $240,000.00, and made a deposit with him of $10,000.00, which offer was accepted by the Receiver, subject to confirmation by the Court (See Receiver's report—R. 471). Thereafter the Court appointed appraisers (R. 496), who made a formal appraisal of the

property, the prior appraisal having been made by appraisers appointed by the Receiver and not by the Court. These official appraisers appraised the value of assets at $219,743.88 as of May 1, 1944 (R. 497), whereas the earlier appraisal valued the property at $220,632.48 as of December 31, 1943. Thereafter, on August 30, 1944, the Court passed an Order Nisi (R. 498), giving notice that the acceptance of the Respondent's bid of $240,000.00 would be ratified and confirmed unless cause to the contrary was shown or a higher bid made by the 9th day of October, 1944, at ten o'clock A.M., at which time higher offers would be considered and objections heard, and required publication of that order ten days before time for final ratification as required by law, which provision was complied with by the Receiver. Neither Petitioner nor anyone else made any higher offer or offered any valid objection why the offer of Respondent, which was nearly ten percent above the appraised value of the property, should not be ratified and confirmed. Consequently, the Court ratified and confirmed the sale (R. 524). It is from this order of confirmation that Petitioner bases his third appeal, No. 8910.

The United States Court of Appeals for the District of Columbia ordered the three cases consolidated for hearing. Before the hearing in said Court, Respondent filed two separate motions for dismissal of Petitioner's two appeals numbered 8770 and 8823 (R. 821-862). Action on the motions to dismiss were delayed until the final hearing. After the final hearing, the United States Court of Appeals, by its order of May 21, 1945, granted Respondent's motions to dismiss the appeals Nos. 8770 and 8823, and affirmed the judgment of the District Court in No. 8910, confirming the sale of the partnership assets to Respondent (R. 912-13).

THE QUESTIONS PRESENTED.

It is very difficult to determine precisely what questions the petitioner desires to raise in this Court. He has abandoned some questions which he urged in the United States Court

of Appeals for the District of Columbia *and raises some new ones which he did not even suggest in said Court.*

It would appear from his petition (pages 23 to 26 inclu.) that he has the following questions in mind:

(1) That at the time each of the orders was signed by the District Court, there was pending in the Court of Appeals, an appeal from a prior order and, consequently, the lower Court had no jurisdiction to pass any of the orders of which he complained.

(2) That petitioner's default under the order, confirming the sale to him, was due solely to the illegal and fraudulent demands made upon him by the Receiver.

(3) That the Court below erred in failing to hold and direct that Respondent must account to the partnership for more than $65,000.00 that has been paid him as a salary by the Receiver, during the 12-1/2 years of Receivership.

(4) That the Court below erred in failing to hold and direct that before Petitioner could have been required to make settlement under his bid a further accounting should have been had between the partners as to partnership affairs.

ARGUMENT.

1. The first question raised by Petitioner seems to be the one on which he chiefly relied. He was always of the opinion that by noting an appeal from any order of the District Court, even though in his favor (like the one confirming the sale to him), he could oust the District Court of jurisdiction pending the disposition of his successive appeals and thus prolong the litigation endlessly. In his petition for certiorari (p. 8) Petitioner says: "On June 23rd, therefore, and for the purpose of blocking the obvious intended sale to Respondent, Petitioner filed notice of his second appeal No. 8823 . . . "

His first two appeals did not "block" the sale or oust the lower Court of jurisdiction for the following reasons:

(a) The first two orders were not final orders as they

required confirmation. *As long as confirmation is required in an order of sale or resale, that order is not a final order.* It is only an order confirming a sale that is appealable. (See D. C. Code 1940) Sec. 17-101; Butterfield v. Usher, 91 U. S. 246, 248; Dikeman v. Jewel Gold Mining Co., 9 Cir., 2 F. (2d) 665; The St. Paul, 262 F. 1021 cert. denied. 252 U. S. 578; King v. Harrington, 35 App. D. C. 111, 115.

(b) The Petitioner was not aggrieved by any of the three orders from which he apealed. The first order, ordering a resale did not prohibit him from bidding at the resale, even though he defaulted on his own bid at the first sale. As a matter of fact, *he did bid at the resale,* but the Court would not accept his bid because it was less than his defaulted bid. The second order gave him the *first* right to purchase the assets *at the figure he had originally bid.* How could he possibly be aggrieved by that order, which again gave him the right to purchase at his own figure, several months after he had defaulted on the same bid? Neither of these first two appeals *had any* merit on the facts and consequently, the final order of confirmation in no way injured Petitioner (See Williams vs. Linville 70 P. (2d) 485, 9 Col (2d) 256). So far as the third order complained of is concerned, the price at which the sale was confirmed to ~~Petitioner~~ was nearly ten percent above the appraised value. Petitioner did not question the adequacy of the price because it is the figure he himself named and twice refused to purchase thereat. Consequently, he was not in any way aggrieved by this order of confirmation.

(c) The Petitioner waived his right to and abandoned his prior appeals by accepting the benefits under the orders appealed from inconsistent with his appeals. In compliance and acquiescence with the provisions of the order of resale, Petitioner accepted a return of his deposit which he made when the property was knocked down to him at the first sale. He then appealed from the order of resale. At that time, there was also pending in the Court of Appeals his appeal from the order confirming the sale to him. *Not-*

withstanding the fact that these two appeals were pending, the Petitioner attended the resale and endeavored to purchase the property offered for sale by bidding therefor, an action entirely inconsistent with the two appeals noted by him before the resale. His action indicated that both of his appeals were abandoned and that the order of resale was a valid, effective order, under which the Petitioner was willing to and would take title if his bid was accepted.

The District Court did not accept his offer, but passed the order which directed the return of the deposits made by both Petitioner and Respondent and gave Petitioner the first right to purchase at his original higher bid. Petitioner accepted the return of his deposit and then noted his appeal from this order. (See *Harris* v. *Harris*, 67 App. D. C. 85, 89 F. (2d) 829; *Mathis* v. *Litteral*, 175 S. W. Rep. 398, 117 Ark 481; *Bolen* v. *Cumby*, et al, 53 Ark 514, 14 S. W. 926; *Albright, et al* v. *Oyster, et al*, 60 Fed. 644, 9 C. C. A. 173.)

(d) The District Court at all times retained jurisdiction over the partnership assets and was justified in passing the orders complained of *as they were necessary for the protection and preservation of the assets and the business.* (See *Bronson* v. *La Crosse Railroad Co.*, 1 Wall 405, 410, 68 U. S. 405). The Receiver urged the necessity of immediate action, contending that delay might result in irreparable loss to and depreciation of the assets and good will. In this report filed in the District Court on March 11, 1944, reporting the default of the Petitioner in consummating the purchase at the sale of February 1, 1944, he said (R. 305-307-308):

> "8. This receiver urges the necessity of some immediate action for the following reasons: The business conducted by this receiver employs some forty-five employees, most of whom are specially trained and many of whom have been employed by this firm for periods ranging from five to twenty years and are thoroughly conversant with the details and technical operations of the business. Since the said sale a large number of them, anticipating a change of ownership and manage-

ment, have asked for their releases from employment by this receiver, and it is only at the urgent request of this receiver that they have remained in such employment, inasmuch as such experienced employees could immediately obtain employment in other plants and enterprises of a similar character and probably at a higher compensation.

"The business of Creel Brothers is principally an automotive service business and its continued operation as such depends on the good will of the various manufacturers and suppliers with whom we have contracts and agreements. Practically all of these contracts and agreements are terminable at will or on 30 days' notice. A number of these manufacturers and suppliers have, since said sale, become uneasy and are apparently uncertain as to the manner in which the operation of the business will be continued. It is, therefore, especially important that the sale of the business be settled before any of our major suppliers transfer their accounts elsewhere. Delay in settlement may result in irreparable loss to and depreciation of the assets and good will."

The employees were cognizant of the bitter litigation between the parties. Men experienced and trained in the special technical work of the business, anticipating a change in ownership and management, and uncertain as to their employment or employer, were becoming uneasy, asking to be released, and threatening to leave. Manufacturers, distributors and suppliers, for the sale of whose products the partnership had been agents and which agencies were terminable at will or on short time notice, were becoming uncertain in relation to the future conduct thereof, and the Receiver was faced with the loss of these agencies and their transfer to other concerns, competitors of the firm.

Here was the threat and danger of both waste and loss; the total disruption of the business as a going concern.

The value of the business and the price to be obtained for it centered in the fact of it being a going concern.

Sale as a going concern was the only method by which its full value could be realized.

It was imperative that it be maintained and sold as a going concern.

Its value lay in the purchaser obtaining a going business. The agencies, one of the most valuable items of assets, terminable at the option of the manufacturers, distributors and suppliers, would have gone into other hands. If the Receiver could succeed in maintaining the business in status quo pending a sale, disaster and consequent waste and loss could be avoided, but immediate sale was the only reasonable and practical solution under the surrounding conditions.

With the loss of trained employees and agencies, or either of them, the good will of the business, another valuable asset, was in danger of being destroyed and lost.

The "agencies" were one of the most valuable assets of this partnership. The Petitioner recognized this for in his answer, filed March 17, 1933, he says (R 24):

> "1. Defendant further avers, that the business is almost exclusively an agency business for the various automotive lines carried; that these various agencies are generally in demand by the firm's competitors, and that, if a Receiver is appointed, it is probable that many valuable agencies would be taken over by competitors, and that thus not only would the individual stocks, *but also the going value of the business as a whole be immensely depreciated, or perhaps even totally ruined.*"
>
> (See also Petitioner's affidavit (R 47-48)).

2. The second question raised by the Petitioner is also without merit. He claims that his default under the order confirming the sale to him was due solely to the illegal and fraudulent demands made upon him by the Receiver. There is no proof whatsoever of this claim. The verified report of the Receiver (R 306-307), the accuracy of which has never been questioned, shows conclusively that Petitioner never had any intention of completing his purchase. He made no tender of the reduced amount he claimed was due or a tender of any kind. The Original order of sale pro-

vided that if either of the parties purchased the assets, he should be entitled at the final settlement and payment of the purchase price to use and apply towards the payment of such price such amount as the Receiver may fairly estimate to be his distributive interest in and to the said partnership assets. It was the Receiver's duty to allow Petitioner only such credit as would leave a sufficient balance to protect him (Receiver) in the final settlement. The amount of cash to be advanced under this mode of settlement was not final. The exact and final calculations would have been made on the final hearing on distribution of the fund. Even though the Receiver would not allow the Petitioner a credit in the amount to which Petitioner thought he was entitled, he lost nothing thereby, for any portion of his share that remained in Receiver's possession would be paid him at the final accounting. The petitioner's claims regarding the prepaid items have no merit. He knew that the Receiver was not selling the large amount of cash in bank or the prepaid items and has never alleged that at the time he made his bid he actually believed these items were included. Furthermore, if there was any sincerity in his claims respecting the cash and prepaid items, he could have reserved his rights by making payment under protest and had that matter settled at the final accounting, before the Auditor. In any event, it is rather a late date for Petitioner to make claims regarding the original sale to him—*after accepting a return of his deposit, and then bidding at the subsequent resale.*

3. The third question raised by Petitioner that the Respondent was not entitled to any compensation for working for the Receiver is one he carefully refrained from raising in his last appeal to the United States Court of Appeals for the District of Columbia. This question was first raised by the Petitioner in the hearings before the Auditor, where he claimed the Respondent was wrongfully paid $17,300.00 up to that time as salary for services rendered the Receiver. (He has increased his claim to $65,000.00 as Respondent

continued to work for Receiver). After hearing testimony on Petitioner's claim (R 142 to 148 Incl.), the Auditor found that the services performed by Respondent "were fairly and reasonably worth the amount of salary paid to him for said services by said Receiver," that the Petitioner "was justly entitled to said salary, and that to require him to return said salary, or any part thereof, would be inequitable and unfair." This report of the Auditor was duly confirmed by the trial Court. Later, in one of his many appeals to the United States Court of Appeals for the District of Columbia (No. 8465), that Court in dismissing said appeal said:

> "We have examined the two grounds of his present appeal. The first is that the Court erred in permitting the Receiver to employ Petitioner's brother in the operation of the business and in allowing him a salary of $100.00 per week. The objection to this employment does not question the brother's qualifications, but is laid on the theory that, because the brother had a half interest in the partnership, he could not legally be employed in the operation of the business. . . . The first may be raised on the subsequent order of distribution of the fund . . . ."

Apparently Petitioner did not raise this question in his last appeal to the Court of Appeals, but reserved it for contemplated appeals from the final order of distribution of the fund. However, for some unaccountable reason, he now raises it in his petition for certiorari. A perusal of the testimony before the Auditor (R. 142 to 148 Incl.) shows that this claim has no legal or moral validity.

4. The Petitioner's fourth question *has never been raised before.* Apparently his new idea is that a new reference should have been made to the Auditor of the District Court before he was required to make settlement under his first bid. The order of sale, from which his appeal to the United States Court of Appeals for the District of Columbia was dismissed, did not provide for such procedure, nor did the petitioner at any time attempt to have said order of sale

changed in this manner. As pointed out in the argument under Petitioner's second question, any objections he had in reference to the Receiver's figures of settlement could have been raised in the final account for the distribution of the fund.

The above covers the four questions specifically raised by Petitioner under the caption of "The questions presented are in the principal part," in his petition (pages 23 to 26 Incl.). However, scattered throughout the petition, Petitioner raises other questions, some of which will be touched upon briefly.

On page 8 of his petition, he claims that it was physically impossible to identify the assets sold to Respondent. This is not true. The assets were appraised by Court Appraisers. The Respondent purchased all of the merchandise on hand as of May 1, 1944. Receiver will have to account to Respondent for all merchandise sold or purchased after that date, for he was and is operating the business for Respondent after said date (R. 233). There will be no difficulty about the final settlement, and the Petitioner will receive what he is entitled to. If he is dissatisfied, he can raise his objections to the final account or order of distribution of the fund. He complains that this alleged uncertainty "chilled" the bidding—another new claim, but nowhere in these proceedings has he ever claimed the sale price was inadequate.

Petitioner also raises *another new question not heretofore raised in the District Court or in the Court of Appeals:* that Section 847 (erroneously referred to as 947) of the United States Code prohibits a sale of real estate at a private sale.

It is a general rule that questions not raised on the trial or presented to the court below for decision cannot be entertained here.

Says the Court in *Robinson & Co.* v. *Belt*, 187 U. S. 41, 50:

> "No objection seems to have been raised in that court to the form of the judgment. In the assignments of error in the United States Court of Appeals for the Eighth Circuit no such question is raised and none

alluded to in the opinion. Such objections could not be raised for the first time in this court. Insurance Co. v. Mordecai, 22 How. 111, 117; National Bank v. Commonwealth, 9 Wall. 353; Wheeler v. Sedgwick, 94 U. S. 1; Wilson v. McNamee, 102 U. S. 572; Edwards v. Elliott, 21 Wall 532; Clark v. Fredericks, 105 U. S. 4."

In *Clark* v. *Fredericks*, 105 U. S. 4, 5:

> "The matter referred to in the second assignment does not seem to have been brought to the attention of either of the courts below, and the objection now made comes too late in this court for the first time. * * * *There is nothing in all this very confused record to indicate that the point was ever made until the brief for the plaintiffs in error was filed here.*" (Italics ours.)

See further the opinion of the Court in *Gila Valley, etc.*, v. *Hall*, 232 U. S. 94, 98; *Magruder* v. *Drury*, 235 U. S. 106, 112, 113.

The authorities in support of the aforegoing proposition are too numerous to be cited.

Petitioner cites no cases in support of his new proposition that Section 847 of the United States Code prohibits a sale of real estate at a private sale, nor indeed can any such cases be found. Furthermore, the sale was a continuation of the second sale at public auction, held on May 1, 1944 under the order of resale of March 22, 1944. At that sale, a controversy arose between the only two bidders (Petitioner and Respondent) as to which bid should be accepted. At the hearing on the Receiver's report of the circumstances giving rise to such controversy, the Court rejected both bids and stated the terms on which the bidder could purchase. This was but a continuation of the public sale. However, as a precaution the Court also took the other steps, to wit, of requiring an appraisement and publication of the Order Nisi (R 498), which fully protected the right of the Petitioner to purchase before confirming the sale to Respondent. That right he failed and refused to exercise.

Petitioner in his petition (p. 18) contends that there was a variance between the order of sale and the order of con-

firmation, because the order of sale provided that both parties to the action were to sign and execute a deed of the property to the purchaser; whereas the order of confirmation provided that Receiver was to execute the deed. He says that this "variance" was unacceptable to him, but he does not say he ever objected to it. What difference does it make who executes the deed as long as the purchaser accepts title and pays the purchase price?

REASONS WHY WRITS SHOULD NOT BE ALLOWED.

The orders appealed from do not involve a question of general importance; nor a question of substance relating to the construction or application of the Constitution or a Treaty or Statute of the United States; nor does the Petitioner claim that they do. His only claim is that, in Appeal No. 8770, the Court in effect ruled (1) "that a purchaser at a judicial sale has no right of appeal against a subsequent adverse order, affecting his interest," and (2) "that a party to a suit has no right to appeal from an interlocutory order, which is immediately executable or where it might cause irreparable injury to the party affected thereby" and (3) "setting aside a sale and ordering a resale is not appealable and that this alleged ruling is contrary and directly in conflict with the cases of *Kneeland* v. *American Loan & Trust Co.*, 136 U. S. 89, 34 L. Ed. 379 and *Forgay* v. *Conrad*, 6 How 201, 16 U. S. 653, 12 L. Ed 404, 12 L. Ed. 379.

The Court did not "in effect" make any of the above rulings nor are the two cases cited by Petitioner "contrary" or "directly in conflict" with the Court's order. The only thing that the Court held with respect to this particular appeal No. 8770 is that the specific order, ordering a resale, was not an appealable order. In this, it was not in error. As already set forth in our argument, this order (1) was not a final order, (2) the petitioner was not aggrieved thereby (3) that he abandoned this appeal by accepting a return of his deposit and bidding at the subsequent sale, and (4) that the District Court was justified in passing the

order of resale to preserve the assets held by the Receiver.

The two cases relied on by Petitioner do not sustain his position. The *Kneeland case* does not deal with an order of resale at all. It simply permits the purchaser at a foreclosure sale to appeal from an order of confirmation where the order itself reserved to the purchaser "the right to appeal from any orders and final decrees made by the Court directing and decreeing the payment of claims and debts found and determined . . ." The *Forgay case* likewise does not deal with an order of resale at all, but from a decree which "not only decides the title to the property in dispute, and annuls the deeds under which the defendants claim, but also directs the property in dispute to be delivered to the complainant, and awards execution."

The Petitioner has no specific question he wishes to raise before this Court. He desires a general review of the whole litigation, which has been pending before the Courts for nearly thirteen years. That is why he has filed a record of 929 pages—most of which is entirely irrelevant to the legal issues he specifically raises. On page 5 of his petition he says, "Certiorari is sought . . . for general review and correction of an alleged abuse of receivership." Almost from the beginning of this case, he has charged nearly everyone connected with it with fraud and corruption and threatened them with criminal prosecution. He demanded "impeachment and criminal prosecution of at least five Justices," of the District Court on the grounds "that they have wilfully and knowingly aided and abetted the criminal abuse of this receivership" and the "peremptory statutory disqualification of all the remaining Justices of the Court" (R. 235). But he has failed to prove any of his charges in these proceedings.

Certain facts of the case stand out in bold relief: The Petitioner was, by an indulgent District Court, twice given the opportunity to purchase the assets of the former partnership at the figure he himself had offered, but when he failed and refused to do so, it gave the respondent the right to purchase them at practically the same figure, which is

nearly ten percent above the Court appraisal. It is obvious that Petitioner does not wish to purchase the assets or permit his brother to do so—he wants to keep the receivership in perpetual operation and have the Respondent work for the Receiver without compensation.

CONCLUSION.

Respondent respectfully submits that the Petitioner has shown no valid reason whatsoever why a writ of certiorari should be granted in any of the three appeals. The Court of Appeals examined the voluminous record and found no error therein. The Petitioner's charges of fraud and corruption are not supported by the record. In short, there is no valid reason why this Honorable Court should permit the Petitioner to endlessly carry on his bitter private vendetta. Respondent, therefore, submits that the Petitioner's application for writs of certiorari should be denied.

Respectfully submitted,

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